IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 307

In the Matter

of

HAROLD SACHER, also known as "Harry" Sacher, and ABRAHAM J. ISSERMAN,

Attorneys.

HAROLD SACHER, also known as "Harry" Sacher, an Attorney,

Petitioner,

and

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK and NEW YORK COUNTY LAWYERS' ASSOCIATION,

Respondents.

BRIEF FOR THE PETITIONER

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Opinions Below

The opinion of the District Court for the Southern District of New York is printed at Tr. 237-71. The opinions of the Court of Appeals for the Second Circuit, affirming the judgment below, and the dissenting opinions of Judge Clark, are printed at Tr. 276-91 and 321-22, and are reported at 206 F. 2d 358.

Jurisdiction

The judgment of the Court of Appeals was entered on July 6, 1953. The order of the Court of Appeals denying the petition for rehearing was entered on August 20, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

The Court of Appeals for the Second Circuit affirmed an order of the District Court for the Southern District of New York permanently disbarring petitioner from the bar of the District Court for professional misconduct in the course of his representation of defendants in the trial of *United States* v. *Dennis, et al.*, 183 F. 2d 201 (2d Cir.), affirmed 341 U. S. 494. The opinion of the Court, by Judge Augustus N. Hand, was concurred in by Judge Chase; Judge Clark dissented. This Court has granted the petition for a writ of certiorari, limited by the Court to the following question:

> "Accepting the facts as found in the memorandum decision of Chief Judge Hincks, does permanent disbarment exceed the bounds of fair discretion, particularly in view of the punishment of petitioner's individual misconduct as a contempt and the finding that the proof does not establish that he so behaved pursuant to a conspiracy or a deliberate and concerted effort?"

Statutes Involved

The order of the District Court disbarring the petitioner is not based upon a statute; the federal courts have inherent

judicial power to grant and revoke license to practice before them. *Ex Parte Garland*, 4 Wall. 333 (U. S. 1866); *Randall* v. *Brigham*, 7 Wall. 523 (U. S. 1868). The relevant provisions of Rule 5(b) of the Rules of the United States District Court for the Southern District of New York, governing disbarment, are set forth in the Appendix, *infra*, pp. 45-46.

Statement

The charges in this disbarment proceeding are all based on the petitioner's professional conduct in open court, as counsel for several defendants in the trial of Dennis and others accused of conspiracy to advocate the violent overthrow of the United States government. By stipulation[1], the record in the *Dennis* case is part of the record in this Court.[2]

The trial in the *Dennis* case lasted from January 17 to October 14, 1949. Upon entry of the verdict, the trial judge filed a contempt certificate finding defense counsel guilty of criminal contempt and imposing jail terms of varying duration, including a sentence of six months for Mr. Sacher.[3] The contempt certificate charged[4] (in Specification I) that Sacher and the other attorneys "joined in a wilful, deliberate, and concerted effort to delay and obstruct

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[1]The stipulation is printed in the Appendix, pp. 47-48.

[2]In this brief, the record in the present disbarment proceeding is cited as "Tr.", and the proceeding in the *Dennis* case as "D. R.". The latter record was received as an exhibit in the present proceeding (Tr. 97), and constitutes its entire evidentiary basis (Tr. 240).

[3]Two other defense attorneys received six-month sentences, two others four-month sentences, and one other a thirty-day sentence.

[4]The contempt certificate is set out in full in the appendix to Judge A. N. Hand's opinion in *U. S.* v. *Sacher*, 182 F. 2d 416, at 430-53 (2d Cir.).

the trial . . . for the purpose of bringing the Court and the entire Federal judicial system into general discredit and disrepute . . ." Mr. Sacher was individually charged with twenty-two additional instances of misconduct specified in the certificate.

On appeal, the Court of Appeals for the Second Circuit reversed the trial judge's order finding the attorneys guilty of concerted action to obstruct the trial and discredit the Court, and also rejected two of the individual specifications against Mr. Sacher.[5] However, the Court affirmed the trial judge's order so far as it was based on the remaining specifications. Thereafter this Court granted certiorari, and the judgment below was affirmed,[6] after which Mr. Sacher served the six-month prison sentence imposed upon him by the trial judge.[7]

During the appellate course of the contempt case this disbarment proceeding was instituted on January 17, 1950 by a petition and supporting affidavit[8] of the bar associations (respondents in this Court), directed against Mr. Sacher and another defense attorney,[9] addressed to the

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[5] *United States* v. *Sacher*, 182 F. 2d 416, 423-25 and 430 (2d Cir.).

[6] *Sacher* v. *United States*, 343 U. S. 1. The writ was limited to the question whether the trial judge was authorized summarily to determine and punish the contempt, or whether the matter should have been referred to another judge for determination after notice and hearing. Justices Black, Frankfurter and Douglas dissented, and Mr. Justice Clark took no part in the decision.

[7] Tr. 284, 311.

[8] Tr. 3-56.

[9] The other attorney was Abraham J. Isserman, whom Judge Hincks ordered to be suspended for two years from membership in the bar of the District Court (Tr 269-71). An appeal has been taken from the order suspending Isserman, but it has not been prosecuted, presumably because of the disbarment proceedings in the Supreme Court of New Jersey, which led to this Court's decision in *In re Isserman*, 345 U. S. 286, petition for rehearing pending.

Chief Judge of the United States District Court for the Southern District of New York, and praying that Sacher "be disbarred from practice" or be subjected to such disciplinary measures as the court might determine. The affidavit repeated almost *haec verba* the charge of participation in a concerted effort to obstruct the trial and discredit the court. The twenty-two individual charges against Mr. Sacher were likewise carried over from the contempt certificate to the affidavit,[11] and a number of other charges were added.[12]

After answer the matter came, on an order to show cause why petitioner should not be disbarred (Tr. 2-3), before Chief Judge Hincks.[13] The only evidence introduced was the record of the trial and preliminary proceedings in the *Dennis* case (Tr. 98, 277). Judge Hincks stated on the record, and the parties agreed, that the factual issues were "of very small compass", and that what was left open for determination were "the inferences that should be drawn from the underlying allegations of fact" and the "conclusions of law" (Tr. 80).

On January 4, 1952 Judge Hincks filed his opinion (Tr. 237-271) and order (Tr. 274) permanently disbarring Mr. Sacher. He held that the charge of improper concerted action or "conspiracy", between Mr. Sacher and the other defense counsel in the *Dennis* case, had not been

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[11]Par. 15 of the affidavit, Tr. 14-47.

[12]Pars. 14, 15 and 16 of the affidavit, Tr. 7-48. These paragraphs contain numerous citations to the stenographic transcript of the *Dennis* trial. They are converted to the corresponding citations to the printed record of the *Dennis* trial by a table in the record of the present disbarment proceeding (Tr. 272).

[13]Chief Judge Hincks, of the District of Connecticut, was sitting as "designated visiting judge" in the Southern District of New York (Tr. 285).

sustained (Tr. 262-266). However, certain of the instances of individual misconduct on Mr. Sacher's part were held to require his permanent disbarment, despite Judge Hincks' express finding (Tr. 270) that the record contained no indication of "moral turpitude" or "venality or lack of fidelity to the interests of his clients" on Mr. Sacher's part, and that his determinative fault was "a temperament which led to such excess of zeal in representing his clients that it obscured his recognition of responsibility as an officer of the court".

On July 6, 1953, Judge Hincks' order of permanent disbarment was affirmed by a division of the Court of Appeals for the Second Circuit, Judge Clark dissenting (Tr. 276-91). Thereafter counsel for the petitioner filed a petition and suggestion for rehearing *en banc*[14] before the Court of Appeals (Tr. 300-320), and a motion to extend the stay of the mandate until thirty days after action on the petition (Tr. 294-96). The motion to extend the stay of the mandate was denied; Judge Clark dissented on the ground that the denial was "unnecessarily harsh and punitive action" (Tr. 297-99). However, on application by counsel for the petitioner and without objection by the respondents, Justice Jackson ordered that the mandate be stayed to and including September 2, 1953, the stay to be continued should a petition for certiorari be filed on or before that date.

On August 20, 1953 the division of the Court of Appeals denied the petition for rehearing, making no refer-

[14] The petition for rehearing was accompanied by a motion for extension of time in which to file the petition (Tr. 295). Counsel for the petitioner had been retained on July 31, 1953 (Tr. 295); up to that date petitioner had appeared *pro se* throughout the proceedings in both the District Court and the Court of Appeals (Tr. 94, 277).

ence to the suggestion that it be considered *en banc* (Tr. 321-24).[18] The petition for certiorari was submitted on August 31, 1953, and was granted by this Court on November 30, 1953 limited, however, to the question as stated above, page 2.

SUMMARY OF ARGUMENT

Judge Hincks found "no intimation" of moral turpitude or venality in the record of Mr. Sacher's conduct, and rejected the charge that he conspired to obstruct the judicial process in the course of the *Dennis* trial. The instances of individual misconduct during a single trial are entirely insufficient to warrant permanent disbarment, particularly in the light of Mr. Sacher's long and unblemished professional career, both before and since the *Dennis* trial. *Bradley* v. *Fisher*, 13 Wall. 335 (U. S. 1871). Furthermore, Mr. Sacher's service of a six-months' prison sentence for contempt should be considered as strengthening the prospect of his continued good professional conduct.

Two particular episodes (designated Specifications XX and XXXVI) were each held by Judge Hincks to be so serious as to require permanent disbarment, but these determinations are based on erroneous inferences and conclusions of law. Specification XX, charging in effect that Mr. Sacher attempted to mislead the court, had already been rejected by the Court of Appeals in the contempt proceeding (*United*

[18] Judge Clark dissented, and stated in his opinion that Judge Frank (not a member of the division which affirmed the disbarment order) "authorizes me to say that he concurs in my views that the issue ought to be heard *en banc*, but that no further steps should be taken here in view of the state of the record and we can properly await and hope for instructions by the Supreme Court as to the procedure we ought to follow" (Tr. 322; 206 F. 2d 358, 366).

States v. *Sacher*, 182 F. 2d 416, 424-25), and was not even mentioned at the disbarment hearing; Judge Hincks' ruling that this Specification was established as a matter of law, because Mr. Sacher did not testify in response to it, is wholly unwarranted by the circumstances, and is based on an erroneous conception of the nature of disbarment proceedings. The seriousness of Specification XXXVI, wherein Mr. Sacher, arguing the motion for acquittal, declared that the early Christians "did so many thing, more than this evidence disclosed, that if Mr. McGohey [the prosecuting attorney] were a contemporary of Jesus he would have had Jesus in the dock" (Tr. 46), was greatly over-estimated by Judge Hincks, as the Court of Appeals has indicated. Mr. Sacher's remark closely resembled a statement in an argument by Clarence Darrow, and Judge Hincks' finding that it requires disbarment is wholly unrealistic.

Some of the episodes relied on by Judge Hincks disclose conduct which is not justified, but which falls short of establishing that Mr. Sacher is not a fit person to practice his profession. Others appear to be unobjectionable under the circumstances of the trial. In his opinion affirming the convictions of the defendants in the *Dennis* case, Judge Learned Hand declared that Mr. Sacher had conducted the defense "with great skill, loyalty, and address" *United States* v. *Dennis*, 183 F. 2d 201, 283. Judge Hincks' rejection of the conspiracy accusation has removed by far the most serious charge brought against Mr. Sacher, and he has already been severely punished for the separate instances of misconduct.

The order of permanent disbarment is clearly beyond "the bounds of fair discretion". It violates the governing principle laid down by this Court in *Bradley* v. *Fisher*,

supra, that permanent disbarment should never be ordered when a lesser penalty will accomplish the disciplinary purpose. There is no modern precedent for permanent disbarment in comparable situations; generally speaking, this extreme penalty is imposed only where immoral or corrupt elements are involved, which are entirely lacking here.

Since the conclusion of the *Dennis* trial four years have elapsed, in the course of which Mr. Sacher has served a six-months' jail sentence, and his professional conduct has twice been commended by the Court of Appeals for the Second Circuit. *In re Sacher*, 206 F. 2d 358, 362. Under these circumstances there is sufficient prospect of his continued good behavior. The judgment of permanent disbarment imposes an excessive, unnecessary, and unprecedented penalty, and should be reversed.

ARGUMENT

ACCEPTING THE FACTS AS FOUND BY THE DISTRICT COURT, AND TAKING INTO ACCOUNT PETITIONER'S PUNISHMENT FOR CONTEMPT AND THE REJECTION OF THE CONSPIRACY CHARGE, PERMANENT DISBARMENT EXCEEDS THE BOUNDS OF FAIR DISCRETION.

It is undisputed that (a) there is no intimation of "moral turpitude" or "venality or lack of fidelity to . . . his clients" against Mr. Sacher, (b) the charge that he participated in a conspiracy or concerted effort to obstruct the judicial process failed for want of proof, (c) the order of permanent disbarment is based on episodes and altercations in open court which, however culpable, occurred in the course of a single and singularly tense and protracted trial, (d) Mr. Sacher has already been punished for his individ-

ual misconduct by the imposition of a six-month jail sentence for contempt of court, (e) his previous record as an attorney over the course of many years is, as the court below described it, "unblemished" (Tr. 280), and (f) subsequent to the *Dennis* trial, Mr. Sacher has so conducted himself as twice to win public commendation from the court below (Tr. 283).

In these circumstances, the record is utterly insufficient to warrant an order of permanent disbarment, and consequent total destruction of Mr. Sacher's professional status and means of livelihood. There is, to our knowledge, no precedent for so severe a judgment in comparable situations,[18] and the decision below is in conflict with the basic principle governing disciplinary proceedings against attorneys, as declared by this Court in *Bradley* v. *Fisher*, 13 Wall. 335, 355 (U. S. 1871):

> "A removal from the bar should therefore never be decreed where any punishment less severe—such as reprimand, temporary suspension, or fine—would accomplish the end desired."

See also *In re Doe*, 95 F. 2d 386 (2d Cir.); *In re Patterson*, 176 F. 2d 966 (9th Cir.); *Costigan* v. *Adkins*, 18 F. 2d 803 (D. C. Cir.); *United States* v. *Hicks*, 37 F. 2d 289

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[18] *In re Isserman*, 345 U. S. 286, decided by an evenly divided Court, is not comparable, as that decision relied in part on Isserman's earlier conviction of statutory rape, and his failure to disclose the conviction when seeking membership in the bar of this Court. Furthermore, Isserman had been disbarred by the Supreme Court of the State of New Jersey, which absent "some grave reason to the contrary" governed the decision by this Court. *Selling* v. *Radford*, 243 U. S. 46; see also Rule 2 par. 5 of the Rules of this Court. Accordingly, the upshot of the *Isserman* case was determined, in view of this Court's even division, by the shifted burden of proof. Mr. Sacher, a member of the bar in New York State, has not been disbarred by the courts of that State (Tr. 282).

(9th Cir.); *United States* v. *Costen*, 38 Fed. 24 (C. C. D. Colo.); *In re Watt & Dohan*, 149 Fed. 1009 (C. C. E. D. Pa.); see also *Smith's Appeal*, 179 Pa. 14; *Matter of Robinson*, 140 App. Div. 329, 125 N. Y. Supp. 193 (1st Dep't).

A. The Facts as Found by Judge Hincks Do Not Warrant Permanent Disbarment.

Judge Hincks' findings correspond, in their general arrangement, to the charges in the bar association affidavit, the governing paragraphs of which[17] are numbered 14, 15 and 16 (Tr. 7-48). Paragraph 14 charges that Sacher (and Isserman) joined with the other defense counsel in a concerted effort to obstruct the trial and discredit the court, relying on citations to the trial record which are grouped under descriptive headings.[18] Paragraph 15 states that the record "further discloses the following conduct by Sacher" (Tr. 14), comprising thirty-six numbered (I to XXXVI) specific instances of Sacher's conduct as set forth therein by citation to and quotation from the record. Paragraph 16 embodies five charges which are paraphrased from

[17]There are eighteen paragraphs in the affidavit. Paragraphs 17 and 18 relate exclusively to Isserman. Paragraphs 1 to 13, inclusive, consist of recitals only, except paragraph 10 which sets forth Judge Medina's finding, made in the course of overruling the defendants' challenge to the panel and array of jurors, that defense counsel had made a deliberate and concerted effort to delay the trial. However, paragraph 10 adds nothing to the charges contained in paragraph 14, and Judge Hincks' rejection of the conspiracy charge would seem to comprehend paragraph 10, although he did not mention it in his opinion.

[18]These 13 headings and groups of citations are designated (a) to (m) inclusive. Paragraph 14 is substantially identical to Specification I of Judge Medina's contempt certificate which lacked, however, the citations to the record, but which included the thirteen descriptive phrases which are utilized as headings in the affidavit. The citations in paragraph 14 relate to the conduct of Isserman as well as Sacher.

and add little to the descriptive headings in Paragraph 14.[19] Among the record citations in support of paragraphs 14, 15 and 16 there is extensive duplication; some appear under all three paragraphs, many under two, and a few under only one paragraph.

Mr. Sacher's answer to the bar association petition[20] did not deny the accuracy of the trial record upon which the prayer for his disbarment was based. It did, however, specifically deny the charge in Paragraph 14 of the affidavit that he had joined in a wilful, deliberate, and concerted effort for the improper purposes set forth therein, and pleaded that the individual charges of misconduct, in view of all the surrounding circumstances, had been "adequately dealt with by the contempt convictions" which had been imposed on him and his co-counsel (Tr. 78).

Judge Hincks' decision (Tr. 237-71) is based entirely on the record in the *Dennis* trial.[21] Accordingly, "the facts as found" by him are as established by that record and relied upon by citation in the bar association affidavit, and his opinion largely consists, as he himself forecast when the matter came before him (Tr. 80), of "the inferences that should be drawn from the underlying allegations of fact". His judgment permanently disbarring Mr. Sacher is based on the inferences and conclusions of law set forth below in the order in which they appear in his opinion.

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[19]The charges in Paragraph 16 are supported by 70 citations to the trial record which are, however, lumped and are not keyed to the five specified charges.

[20]Tr. 56-79. The answer was filed jointly by Sacher and Isserman.

[21]The only other evidence received by Judge Hincks was a copy of Mr. Justice Frankfurter's opinion on a preliminary application in the *Dennis* case, offered on behalf of both Sacher and Isserman (Tr. 111-12).

(1) *Paragraph 15, Specification XX.* The charge herein, that Mr. Sacher failed to disclose certain facts to the trial judge, was found by Judge Hincks to constitute a gross violation of professional duty and, standing alone, to require permanent disbarment (Tr. 242).

(2) *Paragraph 15, Specification XXXVI.* Mr. Sacher's statement, while arguing the motion for a judgment of acquittal, that (D. R. 12016): "They [the early Christians] did so many things, more than this evidence disclosed, that if Mr. McGohey were a contemporary of Jesus he would have had Jesus in the dock", was also held by Judge Hincks to require permanent disbarment (Tr. 244).

(3) *Paragraph 16.* The charge herein that Mr. Sacher persistently argued without permission, and refused to desist, was found to be proved (Tr. 246) "by the cited references to the record".[22]

(4) *Paragraph 16.* Judge Hincks also found proved the charge that Mr. Sacher made insolent remarks and conducted himself in a provocative manner;[23] on this basis he concluded (Tr. 255) "that an order of disbarment is required".

(5) *Paragraph 14.* The charge of participation in a conspiracy or concerted effort to obstruct the judicial process was held by Judge Hincks to be not supported by the record (Tr. 262-66). However, the citations under the 13 descriptive headings were considered as

[22]Which of the 70 citations appended to Paragraph 16 were relied upon by Judge Hincks does not appear from his opinion.

[23]Once again he did not identify the citations here relied upon from among the 70 in the affidavit.

charges of individual misconduct on Mr. Sacher's part, and Judge Hincks concluded (Tr. 268-69) that permanent disbarment was required on grounds similar to those held established under Paragraph 16.

Of the 34 specifications in Paragraph 15, other than the two (XX and XXXVI) which were held to require permanent disbarment, Judge Hincks specifically found eight not proved.[24] He made no finding (Tr. 258) with respect to the charge in Paragraph 16 that Mr. Sacher "asked improper questions with respect to matters already excluded". The charges in Paragraph 16 that Sacher "improperly interrupted" and that he "shouted, snickered and sneered", Judge Hincks held to be proved but to warrant, respectively, only reprimand, and three-months suspension from practice (Tr. 254-55 and 255-58).

In summary, Judge Hincks rejected the primary and by far the most serious charge against Mr. Sacher—that of conspiring to subvert and obstruct justice—but he nevertheless concluded that permanent disbarment was required by Mr. Sacher's conduct in the two episodes described in Specifications XX and XXXVI of Paragraph 15, and by certain instances of misconduct established under Paragraphs 14 and 16, as set forth above. It will now be shown that Judge Hincks' decision, insofar as it depends on Specification XX, is based upon erroneous inferences and conclusions of law; that Specification XXXVI falls far short of supporting the grave inferences drawn in the opinion; and that the instances of misconduct held to be established under Paragraphs 14 and 16, reprehensible as they were,

[24]Tr. 244-45. These are Specifications I, VII, IX, XII, XV, XVII, XVIII and XXVI.

rtheless are clearly insufficient to warrant Mr. Sacher's
nanent disbarment.

1. Paragraph 15, Specification XX

During the *Dennis* trial, the Government called as a
ess one Charles Nicodemus, a former member of the
mmunist Party, who testified to various matters observed
im while a member. On cross-examination Mr. Sacher
d (D. R. 4829) Nicodemus whether he had recently
ded guilty to an indictment for carrying concealed
pons. Judge Medina, observing[25] that ". . . it is perfectly
nissible to show a conviction of crime", repeated the
tion and the witness answered in the affirmative (D. R.
0). When Mr. Sacher offered the court record in evi-
e, the prosecuting attorney called to the judge's atten-
that it showed that Nicodemus had subsequently been
wed to withdraw his plea of guilty, and was adjudged
guilty (D. R. 4834). Thereafter Mr. Sacher and
Gladstein brought out that Nicodemus had been re-
ed to pay costs at the time judgment was entered (D. R.
7, 4842, and 4847-51), and stated that the purpose of
questions was to show that Nicodemus had given infor-
ion to the Federal Bureau of Investigation under an
ngement which covered the disposition of the concealed
pons indictment (D. R. 4854).

Specification XX (Tr. 34) charges that Sacher, know-
that Judge Medina was under the impression that
odemus had been convicted, failed to disclose the actual
s. The identical charge constituted a specification

[25] The judge's observation was prompted by the prosecuting attor-
's remark (D. R. 4830) that "First we will let the witness answer
then I would like to make a statement on this subject".

(XVIII) of Judge Medina's contempt certificate, and was one of the two specifications therein which were rejected by the Court of Appeals for the Second Circuit, on the ground that the charge "that Sacher was attempting to mislead the court . . . we do not think is sufficiently clear". *United States* v. *Sacher*, 182 F. 2d 416, 424-25.

In this disbarment proceeding, just as in the contempt proceeding, the trial record itself is the only evidence in support of this charge. Nevertheless, and without analysis of the record, Judge Hincks held as a matter of law that the charge was established *because Mr. Sacher did not testify in response to it*, saying (Tr. 241-242): "But in the contempt proceeding the respondent had had no opportunity to offer evidence in defense of the charge, or even to plead to the specification. Here, although the specification expressly and directly charged that Mr. Sacher knew of the Judge's misapprehension as to the limited scope of his offer,[26] in his answer he failed to deny his knowledge of the misapprehension;[27] and although thereafter he had opportunity to testify and offer evidence in his defense, that

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[26]But in this, as in all other respects, Specification XX in the disbarment proceeding is identical with Specification XVIII in the contempt proceeding.

[27]However, Mr. Sacher made it clear, during his argument before Judge Hincks, that the joint answer to the bar association petition was intended to admit only that "whatever is contained in the record is there, and there is no dispute as to its correctness", and that there was no intention to admit the inferences drawn from the record in the bar association affidavit (Tr. 144-45): "I think . . . we ought to have it clear here, so that we are not put in a position where through some legal technicality we have forfeited a lifetime of effort, that is was not our intention to admit the words which constitute the subparagraphs of Paragraph 14 . . . as I shall show Your Honor in a moment, many of these pages not only do not support the allegations but actually negate them." Mr. Sacher was speaking here with specific reference to Paragraph 14, but clearly his statement was intended to apply generally to the affidavit.

pportunity was not availed of." This ruling was affirmed y the majority of the Court of Appeals; Judge Augustus N. Iand stated that (206 F. 2d 358 at 359): "Although the urden of proof is on the petitioners [the bar associations], ne accused attorney owed the court the greatest frankness a proceeding such as this".[28]

But it appears that both Judge Hincks and the majority f the Court of Appeals completely overlooked the chronol- gy of these proceedings, and the common sense elements f the situation at the time the disbarment proceeding ame on for hearing in the District Court. The bar associa- on affidavit embodying Specification XX is dated January 7, 1950; the Court of Appeals' decision in the contempt roceeding, wherein Specification XX (then XXVIII) was ejected, was handed down on April 5, 1950; the disbarment earing took place on December 21, 1950. In his argument efore Judge Hincks, counsel for the bar associations *did ot even mention* the charge in Specification XX.

Confronted as he was by an affidavit embodying more an a hundred individual accusations of various types, Ir. Sacher cannot reasonably be held to have failed in his uty of frankness because he did not select from these

[28]Judge Hand here cited *Matter of Randel*, 158 N. Y. 216. In is case, the attorney was charged with malpractice and the mis- ppropriation of funds. The disbarment proceeding took the form of trial in which the attorney (at page 219) "declined to be sworn his own behalf". The court, observing that disbarment is not a iminal proceeding, held that it was legitimate to draw a damaging ference from the attorney's failure to testify, and stated that (at ge 221) he should have taken the witness stand to explain his nduct. The decision appears to be clearly correct, but it has not e slightest application to the present problem, in view of the fact at Specification XX was not even mentioned during the hearing efore Judge Hincks, and in the light of the other circumstances set rth above. It may also be observed that the *Randel* case involved harges of corrupt conduct, which are entirely lacking in the case of Ir. Sacher.

multitudinous charges, as particularly requiring his testimony, one of the only two charges which had previously "been eliminated by careful and formal appellate adjudication".[29] Indeed, Mr. Sacher did not even advert to this charge during his oral argument before Judge Hincks, as is hardly surprising in view of the Court of Appeals' prior action, and thereafter the failure of counsel for the bar associations to press the charge.[30]

Accordingly, there is no basis for the invidious inference drawn by Judge Hincks. And, quite apart from the particular facts of this case, Judge Hincks and the majority of the Court of Appeals were in error in approaching this matter on so technical a basis. A disbarment proceeding is a case or controversy in the Constitutional sense. *Ex parte Garland*, 4 Wall. 333 (U. S. 1866); see *In Re Summers*, 325 U. S. 561, 567 (1945). But it is not an adversary proceeding in the usual sense.[31] It is not founded on any par-

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[29]The quotation is from Judge Clark's dissenting opinion below (Tr. 289, 206 F. 2d at 364).

[30]No mention of this charge having been made during the oral argument, Mr. Sacher's subsequent brief to Judge Hincks did no more than call attention to its rejection by the Court of Appeals (Tr. 242). The bar associations' brief to Judge Hincks (at page 35) for the first time contended that the charge was established because Sacher had not specifically denied it.

[31]See *Matter of Joseph Santosuosso*, 318 Mass. 489, 491: ". . . it is an enquiry and not an adversary proceeding. . . . It is in essence a submission to the court of the alleged facts for investigation by the court and such disposition as the court deems proper." Accord: *Matter of Keenan*, 287 Mass. 577, 582 (1934); *Boston Bar Association* v. *Casey*, 211 Mass. 187, 191 (1912). See also Re *(An Attorney)*, 9 Law Times (N. S.) 299 (Ex. 1863), wherein those who brought charges against an attorney failed to appear when the matter was called and Baron Pollock declared: "If those whose duty it is to be here and proceed with the matter forget their duty, the court will not forget its duty, but take care that such steps are taken as will prevent a private settlement of the proceedings by smothering it and so getting rid of the matter."

ticular legal process,[32] and can therefore be initiated on the court's own motion.[33] The court's "jurisdiction over attornies . . . is to be exercised according to law and conscience, and not by any technical rules". *Ex parte Bayley*, 9 B. & C. 691 (K. B. 1829, *per* Lord Tenterden, C.J.). Therefore a disbarment proceeding is not governed by technical rules of pleading or evidence,[34] and the court has plenary power and responsibility to elicit such facts as it may deem necessary to decide whether or not the attorney "is a proper person to be continued on the roll". See *Ex parte Brounsall*, 2 Cowper 829, 830 (K. B. 1778).[35]

Accordingly, when he came to the conclusion that Specification XX was still of great importance despite its rejection by the Court of Appeals and the failure of counsel for the bar associations to mention it on argument, Judge Hincks had full power to call for further information or explanation from Mr. Sacher, whether by testimony or argument. This has been the rule for centuries; the classic statement in modern times, wherein the history of the principle is also traced, is that of Chief Judge Cardozo in *People ex rel. Karlin* v. *Culkin*, 248 N. Y. 465, at pp. 477-78:

> "The power of the court in the discipline of its officers is in truth a dual one. It prefers the charges and determines them . . . The power to inquire imports by fair construction the power to inquire

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[32] *Matter of Allin*, 224 Mass. 9.

[33] *Randall, Petitioner*, 11 Allen 473 (Mass. 1865). *State* v. *McClaugherty*, 33 W. Va. 250; see *Ex parte Steinman*, 95 Pa. 220, 237.

[34] *Matter of Joseph Santosuosso*, *supra* note 31 at p. 492; *State* v. *Maxwell*, 19 Fla. 31, 38; *Gould* v. *State*, 99 Fla. 662; *In re Durant*, 80 Conn. 140.

[35] See also *The People* v. *Turner*, 1 Cal. 143, 150; *In re Samuel Davies*, 93 Pa. 116, 121-22.

> by methods appropriate and adequate, and so by compulsory process if search would otherwise be thwarted."

But to hold the charge established, without examination and on the sole ground that Mr. Sacher did not testify, was surely, as Judge Clark put it (Tr. 289, 206 F. 2d at 364): ". . . to employ the most regressive and questionable form of procedural technicality to destroy a man's livelihood."

2. Paragraph 15, Specification XXXVI

At the conclusion of the testimony in the *Dennis* case, and while arguing the defense motion for a judgment of acquittal, Mr. Sacher had occasion to comment on Judge Medina's remark (D. R. 12014) that he (Judge Medina) "thought the proof of the secrecy and concealment, devious means, false names, destruction of membership cards and so on was a very material part of the case." In the course of his reply Mr. Sacher stated (D. R. 12016): "The early Christians used false names. They met in secret. They taught in secret. They did so many things, more than this evidence [i.e. the evidence in the *Dennis* case] disclosed, that if Mr. McGohey [the prosecuting attorney] were a contemporary of Jesus he would have had Jesus in the dock."

There ensued the colloquy set forth in Specification XXXVI (Tr. 46-47, D. R. 12016-17), on the basis of which Judge Hincks concluded that Mr. Sacher's statement was "atrocious" and "intentionally provocative" and that "Mr. Sacher is a skilled master in the art of inflammation and so habituated to the practice of that art that he cannot safely be left as a member of this Bar" (Tr. 242-44). The Court of Appeals took a much less serious view of the

matter and limited its criticism to Mr. Sacher's failure to apologize when Mr. McGohey showed resentment (Tr. 279, 206 F. 2d at 360).

Tastes and judgments may well differ on the fitness of the figure of speech used by Mr. Sacher, but there is distinguished precedent for what he said in Clarence Darrow's summation to the jury in *The People* v. *Lloyd*, 304 Ill. 23.[86] There is no doubt that an apology or explanation by Mr. Sacher, to allay the indignation and missaprehension manifested by Mr. McGohey, was very much in order.[87] However, Judge Hincks' conclusion that the episode calls for Mr. Sacher's permanent disbarment seems utterly unrealistic, out of proportion, and far beyond the bounds of fair discretion,[88] and it appears from the opinions below

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[86]See *Argument in Defense of the Communists* (published by Chas. H. Kerr, Chicago 1920), at page 34: "Mr. Forrest [one of the defense counsel] read here yesterday from the New Testament to show that Christ was a Communist, and that his Disciples were Communists; and Mr. Comerford [the prosecutor] shouted, 'Do you compare your people with him, are they lineal descendants of him?' Let me answer, yes. They are lineal descendants, and you would have sent Christ to jail just the same as you would these defendants, just the same as the prosecutor in his day did it; just the same as there have always been prosecutors to send to jail every man who had a dream beyond the narrow vision of his fellow man."

[87]Mr. Sacher acknowledged this on argument before Judge Hincks (Tr. 174). He then explained that, at the time the episode occurred, he felt that his historical argument was being twisted into an attack upon Mr. McGohey. It may also be noted that the comments made by the trial judge and by Mr. McGohey at that juncture were not well calculated to encourage an apology (D. R. 12016-17).

[88]In his dissenting opinion below, Judge Clark quoted (Tr. 289, 206 F. 2d at 365) the comment of Professor Countryman of Yale University in 174 *The Nation* 641, June 28, 1952: "Thirty-two years ago, in another Communist prosecution, Clarence Darrow charged that the prosecutor 'would have sent Christ to jail just the same as you would these defendants'. In the comparative calm of the 1920 Red hunt no one thought of disbarring Darrow or holding him in contempt. And the bar weathered many more years of his zealous arguments for the defense."

that all members of the Court of Appeals were of this opinion.[25]

3. Paragraphs 14 and 16

Inasmuch as Judge Hincks made no specific findings with respect to the disciplinary measures required by the specifications of Paragraph 15 of the affidavit, other than XX, XXXVI, and the eight which he rejected, and since there is extensive duplication between the remaining specifications of Paragraph 15 and the charges and citations under Paragraphs 14 and 16, it appears that these remaining specifications of Paragraph 15 can best be analyzed by considering them in conjunction with and as part of the findings under Paragraphs 14 and 16. Likewise, it is clear that the two categories of charges in Paragraph 16, which Judge Hincks found proved as a basis for permanent disbarment (Tr. 246-54 and 255), add nothing to and are comprehended within the more broadly-phrased findings which he made under Paragraph 14 (Tr. 268-69, 280). Therefore, clarity will be served by considering all these charges, not by paragraph number, but according to the nature of the findings made by Judge Hincks. On this basis, it will be

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[25]The majority opinion below stated (Tr. 279, 206 F. 2d at 360): "Even if this remark was not quite such a serious breach of professional ethics as Judge Hincks thought (see Canon 17 of the American Bar Association's Canons of Professional Ethics), since the intended import may have been only that if the United States Attorney prosecuted secret groups now the same logic would have required him to have done so had he lived when Jesus did, it was capable of misapprehension. When its purpose and effect were evidently misunderstood as an attack upon the opposing counsel's religion, Sacher clearly should not have refused to apologize or explain." Judge Clark in his dissenting opinion stated (Tr. 290, 206 F. 2d at 365): "Certainly one whose business in life is to scan trial records can hardly display a shock of surprise at this comparatively trivial incident compared to what occurs in many a trial without later reprisals".

seen that all of the citations and specifications (except XX and XXXVI) relied on by Judge Hincks in ordering permanent disbarment fall into either or both of the two categories described below.

(a) *Delaying and obstructing the Dennis trial, in disregard of warnings and orders of the trial judge, by arguing without permission, refusing to desist from argument and comment, and reiterating objections raised by other defense counsel.* In this category fall the 22 record citations in Judge Hincks' finding (Tr. 268-69) numbered "(1)" under Paragraph 14 (which duplicate eight of the specifications of Paragraph 15, and twelve of the citations under Paragraph 16),[40] and some 20 additional citations under Paragraph 16.[41]

A number of these episodes grew out of the trial judge's ruling (D. R. 3971) "that from now on, on matters of evidence—and this applies to both sides . . . if an objection is raised to evidence they shall merely say they object period, and if the Court desires argument . . . the argument or statement of grounds can be made, and not otherwise." Several citations to the record show subsequent violations

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[40]Specifications V, VI, XIV, XXI, XXIV, XXVII, XXXIII and XXXIV of Paragraph 15, and the following citations from Paragraph 16: D. R. 1089-90, 1137-39, 2475-76, 4059, 5456, 6565, 6936-37, 9220-21, 9751-52, 10464, 10524-25, and 10856.

[41]Neither the bar association affidavit nor Judge Hincks' opinion key the citations under Paragraph 16 to the several categories of misconduct charged therein. However, the following appear to have been cited to show repetitious argument and objection on Mr. Sacher's part: D. R. 1174-76, 1182-83, 2943, 2995, 3742-43, 3769-71, 4268, 4503, 4534-35, 4860-62, 5095, 5153-55, 6368, 8476-77, 8576-77, 9220, 9222-23, and 11852. It also appears that Specifications XXI and XXIV of Paragraph 15 fall in this classification.

of these instructions by Mr. Sacher,[42] but with prompt apology or other extenuating circumstance.

Many of the citations in this category fall far short of warranting the serious inference drawn by Judge Hincks.[43] Laying aside those few which developed into altercations with the trial judge and which are discussed below under the second category,[44] it cannot be seriously contended that this first category of episodes warrants a finding of Mr. Sacher's unfitness for all further practice.

(b) *Discrediting the court by making insolent and sarcastic remarks, some of which insinuated that the trial judge was partial to the prosecution or mindful of newspaper headlines, and generally conducting himself in a provocative manner.* This category comprises the approximately[45] 20 record citations in Judge Hincks' finding (Tr. 269) numbered "(2)" under Paragraph 14 (which duplicate 12 of the specifications under Paragraph 15 and at least as many citations under Paragraph 16[46]), as well as 9 additional

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[42]*E.g.*, D. R. 5456, 6565, and 7066.

[43]*E.g.*, D. R. 1572, 2476, 9751-52, and 10464.

[44]*E.g.*, D. R. 4059.

[45]In the three sub-categories "(a)", "(b)", and "(c)" of Judge Hincks' finding numbered "(2)", the following citations occur twice: D. R. 384, 1089, 1499, 3045-46, 9403-05, and 11213. The citation D. R. 621 in sub-category "(a)" must be in error, as it contains no reference to Mr. Sacher, and presumably should be D. R. 623, which is repeated in sub-category "(c)". Likewise, D. R. 1660 in sub-category "(b)" and D. R. 1661 in sub-category "(c)" involve a single altercation between the trial judge and Mr. Sacher. Eliminating these duplications, there are 20 citations in Judge Hincks' finding numbered "(2)".

[46]Specifications II, III, IV, V, VIII, XI, XIV, XVI, XIX, XXIII, XXX and XXIV of Paragraph 15, and the following citations from Paragraph 16: D. R. 1055-56, 1088-89, 1365-66, 1457-54, 1497-99, 1573-74, 1660-64, 1937-38, 2086-87, 3013, 4059, and 4806-07.

pecifications of Paragraph 15 and a few additional citations in Paragraph 16.[47]

Counsel for the petitioner does not undertake to justify Mr. Sacher's behavior in a number of the instances disclosed by the record.[48] But the question before this Court is whether this conduct requires that he be permanently disbarred and thus stripped of his profession and deprived of his manner of livelihood. And to resolve this question, the Court will surely wish to review Mr. Sacher's conduct not in a vacuum, for these episodes did not take place there, but against the background of the situation which confronted him in the *Dennis* case, and in the light of his entire professional record.

That record was, as the Court of Appeals described it, "unblemished" (Tr. 280, 206 F. 2d at 360) over a period of 25 years (Tr. 180). Of the many trials in which he has participated during the course of a quarter of a century, this is the only one wherein his deportment has given rise

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[47]Specifications X, XIII, XXII, XXV, XXVIII, XXIX, XXX, XXXII, and XXXV of Paragraph 15, and in Paragraph 16, D. R. 3361-62, 5509, 6164, 7029, 8051-52, and 8533-34.

[48]As appears from what has gone before, there is extensive duplication in the citations. In pointing out that these instances are not so numerous as at first appears, there is no intention to cavil, or to do other than assist the Court in dealing with a long record and a host of references. Some few appear to be in error, as where Mr. Sacher's name does not appear at all, *e.g.* D. R. 1802-03, 3425-27 and 9092, cited under Paragraph 16. Other citations in Paragraph 16 must relate to the categories of conduct charged therein which Judge Hincks found not so serious as to require disbarment (Tr. 254-55 and 255-58) or concerning which he made no findings at all (Tr. 258). See, *e.g.*, D. R. 6118-19, 9151, 9167-68, 9209, and 11,842-43, all cited under Paragraph 16. Still others appear to record conduct which is almost or completely unobjectionable. See, *e.g.*, D. R. 97, 1929, 2827-28, 3352, 3681, and 11886, all cited under Paragraph 16.

to judicial censure. Likewise his professional conduct since the *Dennis* case has twice been highly praised by the court below (Tr. 283, 206 F. 2d at 362). These circumstances must surely be held to cast grave doubt on Judge Hincks' conclusion that (Tr. 254): "his recalcitrance was congenital requiring an order of disbarment."

Since Mr. Sacher's past professional record is unclouded, there is the more reason to credit his plea that the unusual circumstances of the *Dennis* case—its length, complexity, tensions, and consequent strain on the participants—be considered in extenuation. These factors were noticed in this Court when reviewing the contempt convictions.[49] True it is that professional misconduct may not be justified or excused by the pressure of circumstances and provocations. But in determining what disciplinary measures are called for on the basis of charges limited to a single proceeding, laid against an attorney whose conduct in all other cases has been "unblemished", certainly the unique and prolonged stresses of the *Dennis* trial must be taken into account.

Finally, it is apparent from the record that these stresses were felt by the trial judge as well as by counsel. In a very substantial number of the occurrences cited in the bar association affidavit the comments or objections of Mr. Sacher, intemperate as they were, nonetheless were touched off by

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[49] See Mr. Justice Frankfurter's dissenting opinion in *Sacher* v. *United States*, 343 U. S. 1, 26: "In many ways it was a trial wholly out of the ordinary—in its length, the nature of the issues, the political and emotional atmosphere in which they were enveloped, the conduct of court and counsel, the conflicts between them."

caustic or critical comments by the trial judge.[50] In such circumstances an attorney may well be expected to suppress his own pride or wounded feelings. As Mr. Justice Frankfurter observed in his dissenting opinion in the contempt case (343 U. S. at 39): "Counsel are not freed from responsibility for conduct appropriate to their functions no matter what the encouragements and provocations." No doubt it is true, as Judge Hincks declared (Tr. 254), "that counsel ought not undertake to participate in a case likely to involve such strain unless capable of enduring strain and restraining their own conduct within the limits of professional propriety." But if this is true of the bar, it is equally true of the bench. It is sad but true that human behavior does not invariably measure up to the requisite standards of patience, forbearance, firmness, courtesy, and decorum. But it does not follow that even a serious lapse calls for a sentence of professional death, if the attorney's entire record indicates that it was in fact a lapse from standards which he can be expected to observe in the future.

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[50]A good example is the episode set forth in the bar association affidavit under Paragraph 14, D. R. 621-623, and Specification III of Paragraph 15. Here Mr. Sacher's admittedly provocative implication about newspaper headlines was an immediate reaction to the trial judge's thinly-veiled accusation in open court that defense counsel were engaged in "a deliberate, wilful and concerted effort . . . to delay the case by various expedients". This serious charge is, of course, the very one which Judge Hincks held *not* proven in this proceeding. See *infra*, pp. 31-33.

Likewise, Specification XIV, D. R. 4058-59, which embodies one of the most intemperate of Mr. Sacher's remarks, was precipitated by the trial judge's expressing doubt about the importance of a question put by Mr. Sacher on cross-examination of the witness Budenz. In Specification XXI, D. R. 4967-68, Mr. Sacher's statement followed accusations by the trial judge that defense counsel's arguments were "not for the purpose of persuading me on my ruling, but for other purposes", and the judge's further observation that "I

In the *Dennis* trial, it has been found that Mr. Sacher fell below these standards. The sole question now is what disciplinary action his misconduct requires. The two circumstances specified by this Court in its statement of the question on *certiorari*, and the applicable legal standards, are discussed below. But in concluding this discussion of the specific charges of misconduct, we respectfully remind the Court that Mr. Sacher's performance in the *Dennis* case was by no means a dark monochrome. It is, after all, the the high responsibility of a lawyer to represent his client's interests vigorously and fearlessly. An attorney is an officer of the court but he discharges that office by able and honest advocacy.

In his opinion affirming the conviction of the defendants in the *Dennis* case, Chief Judge Learned Hand referred to the "exceptionally capable" representation by Mr. Sacher, and declared that he had represented the defendant Davis "with great skill, loyalty and address". See *United States* v. *Dennis*, 183 F. (2d) 201, 233-34. Such praise from such a judge is to be treasured by any attorney, however exalted his standing at the bar.

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never heard such propaganda in a trial in my life". Later in the trial, the judge accused Mr. Sacher of having "deliberately lied to me" and stated that "I do not take your word for anything" (D. R. 7028-29, cited in the affidavit under Paragraph 16), basing his accusation on an earlier episode which was made the basis of a charge in both the contempt proceeding (Specification XV thereof) and the disbarment proceeding (Specification XVIII of Paragraph 15), and was rejected in both as not proven (182 F. 2d at 424-25; Tr. 244-45). And Specification XXXI, D. R. 9404-05 also cited under Paragraph 14 and relied on by Judge Hincks (Tr. 269), merely shows that Mr. Sacher objected to the trial judge's preceding criticisms of other counsel and defendants, including the statement that (D. R. 9404): "Your field day is over".

B. In View of the Punishment of Petitioner's Misconduct as a Contempt, this Permanent Disbarment is not Warranted

After this Court affirmed[51] Judge Medina's order sentencing the petitioners to six months' imprisonment for contempt, Mr. Sacher served the sentence.[52] Now this Court, in its order granting the petition for certiorari, has requested argument on the weight which should be given to this severe punishment in reviewing the order of permanent disbarment.

Below, the punishment was given no weight whatsoever. The majority opinion of the Court of Appeals does not even mention Mr. Sacher's prior punishment, and Judge Hincks expressly refused to take it into account, saying (Tr. 250):

> "The respondents . . . plead that their sentences for criminal contempt will constitute a sufficient penalty. . . . But the task which has devolved upon me is one which requires a different approach. My problem now is not to fix the measure of the punishment which the respondents may deserve but rather to decide what safeguards are reasonably required for the maintenance of the proper professional standards of the Bar of this Court. To such a problem considerations of the possible deterrent effect of disciplinary action taken against these respondents on other lawyers in future cases I consider irrelevant."

Therein Judge Hincks' statement of the issue was correct, but not his method of resolving it. It is true that disbarment is not for the *purpose* of punishment. *Ex parte*

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[51] *Sacher* v. *United States*, 343 U. S. 1.

[52] With time off for good behavior, Mr. Sacher actually served five months in the Reformatory at Ashland, Kentucky.

Wall, 107 U. S. 265, 288; *Matter of Rouss*, 221 N. Y. 81; *Ex parte Brounsall, supra.* But punishment is not "irrelevant" to maintaining standards of conduct at the bar; if it were, vindication or permanent disbarment would be the only possible results of a disciplinary proceeding. On the contrary, this Court has laid down the general principle that, in disciplinary proceedings against attorneys, the courts should impose only that measure of punishment which is deemed essential to preserve and maintain professional standards and the integrity of the judicial process. *Bradley* v. *Fisher*, 13 Wall. 335 at 354-55 (U. S. 1871).

Therefore, in gauging Mr. Sacher's probable future conduct as an attorney, the severe punishment which has already been imposed upon him should be given weight. The petitioner does not contend that his service of a six-months' jail sentence for contempt gives him immunity to the penalty of disbarment, but his conviction and punishment for contempt is, nevertheless, a relevant circumstance in determining whether disbarment is now called for.[53] Yet neither

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[53]Both Judge Hincks and the court below appear to have taken a totally unrealistic view of the practical effect of the disbarment order. Judge Hincks said in his opinion—and the court below quoted the statement with apparent approval—that Mr. Sacher's "qualities . . . might well be unobjectionable in commercial fields" and that ". . . in negotiations at arm's length for some commercial advantage to a principal I should expect that he would be a trustworthy and highly effective representative" (Tr. 270, 278). But is it really to be expected that Mr. Sacher—51 years old, 29 years at the Bar, and now the object of widespread publicity as legal representative of those whose political affiliations are abhorrent to most segments of public opinion, as the recipient of a six-months' jail sentence for contempt, and as a disbarred attorney—will be able to make the transition from the legal profession to "commercial fields"? However, gratifying it may be that the judges believe his qualities are suitable for commercial application, it is hardly to be expected that many businessmen will retain one who is laboring under such a triple stigma, and whose entire career has been devoted to professional rather than commercial pursuits.

the court below nor Judge Hincks gave it any weight whatsoever; they mistakenly turned the principle, that the purpose of disbarment is not punishment, into the notion that previous punishment should be totally disregarded in determining the present prospects of the petitioners future good behavior at the bar. This, we respectfully submit, has led to an erroneous and oppressive result. *Cf. In re Watt & Dohan,* 149 Fed. 1009 (C. C. E. D. Pa.)

For surely respect for the courts, and the integrity of the legal profession (the two purposes of disciplinary action described as primar in *Bradley* v. *Fisher,* 13 Wall. 335 (U. S. 1871)), have been amply vindicated by the heavy contempt sentences meted out to Mr. Sacher and his colleagues, and the many and weighty reprimands administered to them by high judicial authority. Insofar as the deterrent effect on other lawyers may be considered, it is equally hard to believe that additional measures remain necessary. And finally, it is both logical and natural to infer that what Judge Clark called "his searing experience" (Tr. 284) is likely to prevent any repetition of the conduct which was its cause, and to leave a beneficial imprint on Mr. Sacher's professional attitude, which the judicial commendations of his conduct since the *Dennis* trial seem to reflect.

C. In View of the Finding that Petitioner's Conduct was not Part of a Conspiracy or Concerted Effort, His Permanent Disbarment is not Warranted.

Far more serious than the charges of individual misconduct in the bar association affidavit, is the accusation therein that Mr. Sacher joined in a wilful, deliberate, and concerted effort, tantamount to a conspiracy, to prevent the *Dennis* trial from ever reaching a conclusion and to discredit the entire Federal judicial system. From its length, phras-

ing and placement (Tr. 7-13) it is clear that Paragraph 14, embodying the conspiracy charge, was regarded as the heart of the affidavit, and on argument before Judge Hincks, counsel for the bar associations placed primary emphasis thereon.[84]

However, the bar associations produced no evidence in support of the charge other than the trial record itself, and Judge Hincks found (Tr. 262-66) that the record did not sustain the charge. The Court of Appeals did not disturb this conclusion (Tr. 279, 206 F. 2d at 360).

The decision permanently disbarring Mr. Sacher, therefore, rests entirely on the several instances of individual misconduct, and this Court's stated test—"the bounds of fair discretion"—is to be applied here to an accusatory affidavit within which the major charge has failed. Although not corrupt in a pecuniary sense, participation in a conspiracy to discredit the very law which attorneys are sworn to uphold would have constituted truly nefarious and possibly felonious[85] conduct.

But in the upshot, Judge Hincks felt constrained (Tr. 270) to "make it plain that I find in the entire record no intimation that his conduct was tainted by venality or lack of fidelity to the interests of his clients,—offenses which demonstrate a moral turpitude wholly absent here." Indeed, he could say nothing worse of Mr. Sacher than that his "temperament . . . led to such excess of zeal in representing his clients that it obscured his recognition of responsibility as an officer of the court."

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[84] He devoted well over half his time to the conspiracy charge (Tr. 99-126), as did Mr. Sacher in reply (Tr. 141-67).

[85] *Cf. In re Craig*, 12 Cal. 2d 93, and *Craig* v. *United States*, 81 F. 2d 816 (9th Cir.).

Twenty-five years of blameless practice before the *Dennis* case, and four years since that trial during which he has been twice commended by the Court of Appeals, hardly warrants the conclusion that Mr. Sacher's "recognition of responsibility as an officer of the court" was more than temporarily obscured. Much more credible, it would appear, is Judge Clark's conclusion in his dissent below (Tr. 284, 206 F. 2d at 362) that Mr. Sacher "gives good earnest of proper professional conduct". And it is in the light of these considerations that the principles and standards customarily applied by the courts in disciplinary proceedings, to the examination of which we now turn, must be applied.

D. Permanent Disbarment Exceeds the Bounds of Fair Discretion.

Over a century ago Stephen J. Field, later Chief Judge of the Supreme Court of California and thereafter a Justice of this Court for many years, was ordered permanently disbarred for "having set at defiance the authority of this [California district] court, and having vilified the court, and denounced its proceedings." See *The People* v. *Turner*, 1 Cal. 143, 150 (1850).[28] In directing his reinstatement,

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[28]There is a full account of this episode in Carl Brent Swisher, *Stephen J. Field, Craftsman of the Law* (1930), at pp. 37-51. After the District Judge (William R. Turner) had overruled a motion argued by Field, the Judge became ". . . enraged that Field still insisted on having the last word", and sentenced him to be fined $500 and imprisoned for forty-eight hours. Swisher writes (at pp. 38-39): "Field declared that he was not disrespectful to Turner in the courtroom. As to that, stories differ. As Field left the room a friend told him not to mind what the judge said, for Turner was an old fool. Field replied, 'The judge is a d——d old jackass'. Turner's landlord heard the comment, and opened the door of the courtroom and shouted, 'Judge Turner, Judge Field says you are a d——d old jackass'. Turner, sputtering wrathfully, ordered Field locked in his

the Supreme Court of California declared that attorneys should be disbarred when ". . . they are guilty of such conduct, either in or out of their profession, as shows them to be unfit persons to practice it." *The People* v. *Turner, supra,* at page 150.

This statement of the rule is in line with what had early been laid down in England; in disbarment proceedings, according to Lord Mansfield, the test is "whether a man . . . is a proper person to be continued on the roll or not" (*Ex parte Brownsall, supra*), and no one has since put the matter more succinctly. This Court, in the *Bradley* case, *supra,* at page 354, described the test as whether ". . . the con-

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own office—there being no jail in town." The account by Turner's friends, quoted by Swisher (at pp. 38-39, footnote 35) is, naturally enough, considerably harsher: "After a decision had been given by Judge Turner, in which Judge Field was an attorney, Judge Field hurriedly rose, and with an air of consequence, told the court that its decision was incorrect, and not in accordance with the law. He was ordered to take his seat—he refused, and was then fined. He still persisted in talking—said that he had a right to be heard, and still continued to talk, and did talk, until the court imposed a fine. . . . and imprisonment of forty-eight hours."

Thereafter, Judge Turner ordered Field and two of his colleagues disbarred, but the Supreme Court of California issued a mandamus for their reinstatement. Field then published a newspaper article, declaring that Judge Turner was a man of "depraved tastes", "vulgar habits", "ungovernable temper", and was "reckless of truth" and "grossly incompetent". Turner issued an order to show cause why Field should not be once again expelled from the Bar for having published these statements. On the return day, Field read a statement in open court before Judge Turner that contained many of the same statements previously included in the newspaper article. Turner again disbarred him, and once again the Supreme Court of California ordered his reinstatement.

In retrospect, Mr. Justice Field wrote of this episode (*Personal Reminiscences of Early Days in California*, privately printed; the following quotation is reproduced in Swisher, at pp. 50-51): "There was undoubtedly an unnecessary severity of language in two or three passages of my answers to his attacks; and some portion of my answer in court to his order to show cause why I should not be re-expelled from the Bar might better have been omitted. I have since learned that one is never so strong as when he is calm, and never writes so forcibly as when he uses the simplest language".

tinuance of the attorney in practice [is] incompatible with a proper respect of the court for itself, or a proper regard for the integrity of the profession."

It follows that disbarment should not be ordered "unless it is clear that the lawyer will never be one who should be at the Bar".[57] In disbarment, as in contempt proceedings[58] the purpose is not punishment, but the safeguarding of the processes of justice. Nevertheless it is, of course, recognized that suspension from practice and, even more, permanent disbarment are *in fact* very severe punishments. In 1821, this Court laid down the rule that in contempt cases the measure of punishment should be governed by the exercise of "the least possible power adequate to the end proposed". See *Anderson* v. *Dunn*, 6 Wheat. 204, 231 (U. S. 1821). And in 1871 this principle was expressly made applicable to disbarment proceedings in *Bradley* v. *Fisher*, wherein it was stated (13 Wall. at p. 355):

> "A removal from the bar should therefore never be decreed where any punishment less severe—such as reprimand, temporary suspension, or fine—would accomplish the end desired."

To be sure, the determination of the necessary measure of punishment entails the exercise of discretion and judgment by the court before which the disciplinary proceeding

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[57] See Henry S. Drinker, *Legal Ethics* (1953) at page 46. The author is the Chairman of the Standing Committee on Professional Ethics and Grievances of the American Bar Association.

[58] The similarities and differences between contempt and disbarment proceedings are discussed in *Drinker, op. cit. supra* note 57, at pages 38-41.

is conducted.[8] Although the decisions are not altogether uniform on the question of how closely that judgment will be reviewed on appeal,[9] and the standard in this Court's statement of the question on *certiorari*—"the bounds of fair discretion"—is not mathematically measurable, we are not without guides to the content and proper application of the phrase "fair discretion". On appeal, disputed questions of fact determined below (absent here, since the *Dennis*

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[8]The majority of the Court of Appeals in this case appear to have been governed in large part by reluctance to review the discretion of Judge Hincks, who had been specially called in as a visiting judge to hear the case (Tr. 285): "Even if a less severe measure of discipline might have been imposed, we do not find any abuse of discretion in disbarring the respondent from practice. . . ." (Tr. 281, 206 F. 2d at 361).

[9]It has been said that the appellate court will not alter the outcome unless the punishment below constitutes "an abuse of discretion". The use of this phrase in disbarment proceedings appears to derive from the circumstance that, prior to the Judiciary Act of 1925, this Court's review of disbarment proceedings in the lower courts was exercised by mandamus, rather than by appeal or writ of error, and mandamus traditionally will issue only to correct ministerial errors or "abuse of discretion". *Thatcher* v. *United States*, 241 U. S. 644, and below 212 Fed. 801, 804-05 (6th Cir.) (wherein the Circuit Court of Appeals for the Sixth Circuit explained the Supreme Court's refusal to review disbarment by appeal or writ of error on the ground that the jurisdictional statutes required a minimum monetary amount, a requirement which did not apply to the review of district court disbarment proceedings in the circuit courts of appeals). The earliest case appears to be *Ex parte Burr*, 9 Wheat. 529 (U. S. 1824) where an application for mandamus to the Circuit Court for the District of Columbia to restore the petitioner to practice was refused, Chief Justice Marshall stating that the court was "less inclined to interpose . . . because the complaint is not of an absolute removal, but of a suspension [for one year] which is nearly expired. . . ." *Id.* at 531. Whether or not this standard should in any event be applicable when the accused attorney is also a member of the bar of the appellate tribunal (as is Mr. Sacher a member of the bar of this Court, admitted January 31, 1938), other appellate courts have declared that they will "re-examine the entire record in a disbarment proceeding and . . . examine the case *de novo* to insure the fullest opportunity to the accused lawyer to protect his honor and preserve his means of livelihood." See *Dorsey* v. *Kingsland*, 173 F. 2d 405, 409 (D. C. Cir.).

trial record is the only evidence) will not ordinarily be reviewed *de novo*,[81] and the lower court's judgment as to the appropriate length of a suspension order will not lightly be upset.[82]

But when, as is the case here, the facts are established by the official record of a trial in which the attorney's conduct in open court is called in question (*cf. In re Fisher*, 179 F. 2d 361 (7th Cir.)), and the lower court orders permanent disbarment, the question on appeal is governed by the *Bradley* case, *supra*. That question is whether permanent disbarment is required, or whether a less severe punishment will create the prospect of future good behavior. And this question cannot be measured by any magical rubric; if the lower court's discretion is "exercised with manifest injustice", the appellate court must rectify the error. See *Ex parte Bradley*, 7 Wall. 364, 377 (U. S. 1869). The Court of Appeals for the Second Circuit has itself reversed a district court's order of disbarment without any finding of "abuse of discretion" below, simply because "it seems to us that disbarment is too severe a penalty" and "we should impose a less severe punishment." *In re Doe*, 95 F. 2d 386, 387 (2d Cir.) The comment of Judge Learned Hand, though written in another context, is nevertheless enlightening here:[83]

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[81]See, *e.g.*, *Curtis* v. *Whiteford*, 41 F. 2d 302 (D. C. Cir.); *Thomas* v. *Ogilby*, 44 F. 2d 890 (D. C. Cir.); *Halpern* v. *Committee on Admissions and Grievances, etc.*, 139 F. 2d 361 (D. C. Cir.); *Hertz* v. *United States*, 18 F. 2d 52 (8th Cir.); *In re Spicer*, 126 F. 2d 288 (6th Cir.).

[82]See *e.g. In re Chopak*, 160 F. 2d 886 (2d Cir.); *In re Schachne*, 87 F. 2d 887 (2d Cir.) and *Hancock* v. *Andrews*, 161 F. 2d 547 (5th Cir.).

[83]See *Barnett* v. *Equitable Trust Co.*, 34 F. 2d 916, 920 (2d Cir.).

> ". . . we think the allowance plainly too large. It is argued that we should not disturb it, unless there has been an abuse of discretion. Perhaps so, but that phrase means no more than that we will not intervene, so long as we think that the amount is within permissible limits; if our conviction is definite that it is [not], we cannot properly abdicate our judgment."

So much the more is it the responsibility of this Court, at the apex of the Federal judicial system, to bring to bear its own judgment of the disciplinary measures called for in the present case, in order to establish equitable and uniform standards of conduct and discipline for the Federal Bar.[64]

But even if Judge Hincks' "fair discretion" is to be given the widest latitude on review here, still the bounds have been far exceeded by the order of permanent disbarment. At the threshold of the argument herein it was stated that there is no precedent for so severe a judgment in com-

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[64]In five of the federal judicial circuits, the rules provide for disbarment of any attorney who has been disbarred "in any court of record", unless he shows good cause to the contrary. First Circuit, Rule 7(3); Third Circuit, Rule 8(3); Fourth Circuit, Rule 6(3); Seventh Circuit, Rule 6(b); Tenth Circuit, Rule 7(3). In two other circuits, disbarment "in any court of record" automatically disbars the attorney in the circuit, without opportunity to show cause to the contrary. Sixth Circuit, Rule 7(2); Eighth Circuit, Rule 6(d). In one circuit the rules provide for disbarment of any attorney who has been disbarred in any state, territory, or insular possession, Fifth Circuit, Rule 7(3). The Second and Ninth Circuits have no comparable rule, and the comparable rule in this Court appears to apply only to disbarments in state, territorial, and colonial courts and the District of Columbia. Accordingly, disbarment in a federal district court has far-reaching effects on an attorney's status as such in the other federal courts. There is, therefore, great need that the principles governing disbarment proceedings be well-defined, for their uniform and equitable application within the federal judicial system. *Cf. In re Thomas*, 36 Fed. 242 (C. C. D. Colo.), where a circuit and a district judge submitted a disbarment matter to the Circuit Justice (Justice Miller) for his decision.

parable circumstances.[65] Generally speaking, the courts have ordered permanent disbarment only where immoral or corrupt conduct was involved, and it is undisputed that the record here discloses nothing of the kind. Thus in *In re Doe*, 95 F. 2d 386, at 387 the Court of Appeals for the Second Circuit in a *per curiam* opinion (Judges Learned Hand, Swan, and Augustus N. Hand) laid down the rule that:

> "Disbarment is fitting only when the attorney has been guilty of corrupt conduct; of some attempt to suborn a witness, or to bribe a juror, or to forge a document, or to embezzle clients' property, or other things abhorrent to honest and fair dealing."

See also *United States* v. *Costen*, 38 Fed. 24 (C. C. D. Colo.); *Holland* v. *Flournoy*, 142 Fla. 459. In the few cases lacking a corrupt complexion where disbarment has been ordered because of the attorneys' attitudes toward courts and judges, there have been extraordinary elements—threats of physical violence, scandalous and libelous personal charges against individual judges in briefs or newspaper articles, or misconduct repeated in different proceedings and before different judges[66]—such as showed that the attorney would

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[65] *Supra*, p. 10. See *Parker's Case*, 1 Vent. 331 (K. B. 1726), where an attorney who had addressed a county court contemptuously was suspended; the Court of King's Bench ordered that he be restored if he made apology in open court.

[66] Drinker, *op. cit. supra*, note 57, at pp. 305-06, cites four cases where attorneys were disbarred for "marked disrespect" to the courts. In *People* v. *Green*, 7 Colo. 237, the lawyer halted on the street a judge before whom he had recently appeared, and addressed abusive and threatening language to him. The attorney was disbarred, but the court promised leniency, based on his previous good record, in restoring him to membership at such time as his future conduct might warrant. In *United States* v. *Green*, 85 Fed. 857 (C. C. D. Colo.) the same attorney, who had retained his member-

"never be one who should be at the bar", but which are entirely lacking in the case of Mr. Sacher.

On the other hand, there are numerous cases in which, despite proof of misconduct involving moral turpitude, or in other respects more serious than that established here, the appellate courts have reversed orders of disbarment or imposed much lighter disciplinary measures.[67] Current standards of lawful conduct are generally thought to be higher than those of seventeenth-century England; never-

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ship in the federal bar, was disbarred for filing a brief on appeal, the contents of which went "far beyond criticism or denunciation of the decisions [below] . . ." and contained "personal attacks upon the intelligence, integrity, and character of the judges" (85 Fed. at p. 858). The judgment of disbarment laid great weight on Green's behavior of 16 years earlier, saying (85 Fed. at p. 861) that his punishment at that time had had "no effect upon the respondent in the way of reformation." Fraud, moral turpitude, and libelous publications were involved in *In re Charles A. Thatcher*, 80 Ohio St. 492. In *State* v. *McClaugherty*, 33 W. Va. 251, the attorney published a false and libelous article about a judge in a newspaper. *Cf. Duke* v. *Committee on Grievances*, 82 F. 2d 890 (D. C. Cir.), where there were repeated offenses in different proceedings. Different in character but similar in principle is this Court's decision in *Ex parte Wall*, 107 U. S. 265, where the disbarred attorney took active part in a lynching staged in front of the courthouse.

[67]Federal cases: *In re Patterson*, 176 F. 2d 966 (9th Cir.) (Assistant United States Attorney, who took private cases in questionable relation to the interests of the United States, reprimanded; order of disbarment reversed); *Costigan* v. *Adkins*, 18 F. 2d 803 (D. C. Cir.) (Attorney concealed the loss of client's money which had been entrusted to him, but later made good the loss; conduct described as "most reprehensible", but district court's disbarment order modified to suspension for eighteen months and costs); *Cobb* v. *United States*, 172 Fed. 641 (9th Cir.); *In re Watt & Dohan*, 149 Fed. 1009 (C. C. E. D. Pa) (Attorneys already disbarred by Circuit Court of Appeals for the Second Circuit; rule to disbar discharged, the court stating at p. 1009: "The brief which they filed was scandalous and insulting, and richly deserved the punishment that was inflicted; but I have serious doubts whether the Circuit Court for the Eastern District of Pennsylvania, to which they have been admitted to practice, ought to punish them again for this single

theless, the punishments today deemed appropriate for transgressions are, in general, far less draconic. And we do not suggest that the standards of conduct for attorneys are or should be less stringent today than formerly—quite the contrary—in observing that the decision below appears to be an atavist of old cases[**] wherein attorneys were disbarred for conduct of a type which is now dealt with by suspension or reprimand. The more modern and salutary principle is that disbarment should not "defeat the [disciplinary] purpose by ruining him whom they would reform". See *In re Isserman*, 345 U. S. 286, 294.

CONCLUSION

More than four years have now elapsed since the conclusion of the *Dennis* trial. In addition to the *Hall* and

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fault, aggravated though it was."); *In re Ades*, 6 F. Supp. 467 (D. Md.).

State cases: *Utz* v. *State Bar*, 21 Cal. 2d 100 (Attorney who forged signatures on estate bonds, altered other documents in order to mislead the probate court, and improperly solicited professional employment, suspended for two years); *In re McCowan*, 177 Cal. 93 (District Attorney guilty of "serious improprieties" involving the solicitation of money from a criminal defendant, and of using "abusive and offensive language" about a judge, suspended for one year, on the ground that leniency was in order where no pecuniary corruption was involved; *In re May*, —— Ky. ——, 249 S. W. 2d 798 (former Congressman, convicted of felony involving moral turpitude, reinstated as member of bar); *Matter of Robinson*, 140 App. Div. 329, 125 N. Y. Supp. 193 (1st Dep't) (Attorney convicted in federal court of "wilfully and intentionally obstructing the administration of justice" suspended for one year, taking account of his excellent past record and absence of "sordid motives", and fact that the misconduct grew out of "excessive and ill-judged zeal"); *Smith's Appeal*, 179 Pa. 14 (Attorney guilty of inflammatory and prejudicial conduct during a trial; lower court's order of permanent disbarment modified to two years' suspension).

[**]See, *e.g.*, *In re Hastings*, 11 Fed. Cas. No. 6,199 (C. C. D. Cal. 1869).

Nukk cases wherein Mr. Sacher's professional conduct was commended (Tr. 283; 206 F. 2d at 362), and appellate work in the *Dennis* case itself, during this time he has been actively engaged in proceedings before the Board of Education in New York City, and before the Subversive Activities Control Board of the Federal Government. He is one of two counsel representing defendants on appeal from their conviction under the Smith Act in the District Court for the Southern District of New York (*United States v. Flynn*, Docket No. 22763 in the Circuit Court of Appeals for the Second Circuit).

Any disciplinary proceeding which hinges on the prospect of an individual's future behavior requires a judgment which cannot, in the nature of things, be based on absolute certainty. But if this case is no exception, nevertheless a judgment that Mr. Sacher is unlikely to repeat the lapses for which he has already paid so dearly is greatly reinforced by the four years of blameless and twice-commended professional conduct which have transpired since the trial in which the lapses occurred.

In the court below, Judge Clark commented (Tr. 283; 206 F. 2d at 362) that: "Were we to select a public defender, we could hardly do better than seek respondent's services in cases of this type [referring to the *Hall* and *Nukk* cases] where it is difficult to secure able representation and will undoubtedly become more so in consequence of decisions such as this."[69] And the "consequence" of the

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[69]Concluding his argument *pro se* before Judge Hincks, the petitioner stated (Tr. 180-181):

> "I have been a member of the bar for 26 years now. I have dedicated, I can say with all regard for truth, my professional life to the service of those who were in need of service. I have not made of the profession a money-grubbing activity.
>
> "I believe, your Honor, that employed, as I have been, for the greater part of my career as an attorney for labor and for

decision below is especially alarming when viewed in the afterglow of Judge Learned Hand's praise of the petitioner's professional conduct—as skilfull, loyal, and "exceptionally capable"—in the very trial which gave rise to this proceeding.

It is, indeed, a matter of common knowledge that the frequent unavailability of counsel to represent individuals accused of unlawful subversive activities or connections has increasingly aroused concern among bar associations and leading jurists, including members of this Court. True, it does not excuse the petitioner's conduct that it arose out of current tensions in the course of a long and otherwise unspotted professional career. There is less than no reason to relax the standards of conduct in order to favor *any* attorney, whether or not his client's cause obliges him to swim against the tide.

Yet it cannot be gainsaid that the petitioner's conduct would not, by the standards that have customarily been applied by the courts in more serene times, warrant a sentence of professional death and irredeemable disgrace. And if this punishment of wholly exceptional severity is now allowed to stand, the consequence must be to magnify contemporary hazards to the integrity and dispassionateness of the American bar.

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other minority groups, that such modest success as I have enjoyed in persuading the courts to extend the benefits which it lies within their powers to grant I have contributed to the strengthening of the regard of the people for our judicial institutions. To the extent that I have dealt honestly with the poor and other oppressed groups in our community, I think I have also given to them a confidence that the bar contains within itself men who are not separated from the people and have thereby commended the bar to the people."

For all of the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

February 15, 1954.

TELFORD TAYLOR
New York, N. Y.
Counsel for Petitioner

APPENDIX

1. At the time of the proceeding before Judge Hincks, disbarment proceedings in the District Court for the Southern District of New York were governed by Rule 4, of which the applicable portion read as follows:

> "Any member of the Bar of this court may be disbarred, suspended from practice for a definite time or reprimanded for good cause shown, after opportunity has been afforded to such member to be heard."

Since March 1, 1952, disbarment proceedings in the District Court for the Southern District of New York have been governed by Rule 5 of its Rules, which reads in relevant part as follows:

> "(b) The court shall make an order disbarring a member of the bar of this court (1) who has been convicted in any federal, state, or territorial court of an offense which is a felony in the jurisdiction of such conviction; or (2) who has been disbarred by any court of record, federal, state or territorial. The court may make an order disbarring a member of the bar who has resigned from the bar of any state, or of any such court. The court may make an order suspending a member of the bar of this court from practice until the expiration of the period for which he has been suspended by such other court.
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> "(c) Professional misconduct shall include fraud, deceit, malpractice or conduct prejudicial to the administration of justice, or a failure to abide by the provisions of the canons of ethics of the American Bar Association or of the New York State Bar Association.

"Complaints of professional misconduct shall be presented to the chief judge, and if he deems the charges of sufficient weight, he may refer them either to the United States Attorney for this district or to the grievance committee of a bar association in the county where the member resides or has his office. The United States Attorney or grievance committee shall thereupon conduct such preliminary investigation of the charges as may seem warranted and shall take appropriate action.

"(d) A disciplinary proceeding shall be commenced by filing a petition setting forth the charges against the respondent. A copy of the petition shall be served upon the respondent personally or by mail. The respondent shall serve his answer within 20 days thereafter. The chief judge may thereupon order the matter set for prompt hearing before a court of one or more judges, or may appoint a master to hear and report his findings and recommendations. If the court finds the respondent guilty of professional misconduct, it may disbar, suspend or reprimand him. The court, with the consent of the respondent, may order the hearing to be private, and direct the papers to be sealed."

2. Stipulation with respect to the record in the *Dennis* case:

SUPREME COURT OF THE UNITED STATES

In the Matter
of
HAROLD SACHER, also known as "Harry Sacher, and ABRAHAM J. ISSERMAN,
Attorneys.

HAROLD SACHER, also know as "Harry" Sacher, an Attorney,
Petitioner,
and
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK and NEW YORK COUNTY LAWYERS' ASSOCIATION,
Respondents.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties to the above-entitled cause that:

For the purposes of the petition for a writ of certiorari and, in the event the petition be granted, for the purpose of hearing and determining the case on its merits, the printed record shall consist of the record printed and filed with the Clerk of the Supreme Court.

IT IS FURTHER STIPULATED AND AGREED that in addition to the printed record, the record herein shall include, and the parties may refer in brief and argument to, the record on appeal filed in the United States Court of Appeals for the Second Circuit in the case of *United States* v. *Den-*

sis, et al, on the appeal of the defendants in said case from the judgments of conviction rendered against them in the United States District Court for the Southern District of New York on October 21, 1949, which record on appeal was offered by petitioner herein and received as an exhibit in evidence on the trial of the above-entitled proceeding.

IT IS FURTHER STIPULATED AND AGREED that any of the parties may refer in their briefs and argument to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

Dated: New York, N. Y.
August 28, 1953.

/s/ TELFORD TAYLOR
Counsel for Petitioner

/s/ F. W. H. ADAMS
Counsel for Respondents